

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

R. ALEXANDER ACOSTA, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

DAY-MONT BEHAVIORAL HEALTH CARE,  
INC., et. al.,

Defendants.

Civil Action File No.

3:18-cv-00242-TMR

Hon. Thomas M. Rose

**AGREED ORDER**

Whereas, Plaintiff R. Alexander Acosta, Secretary of the United States Department of Labor (the “Secretary”), filed a complaint (“Secretary’s Complaint”) against Defendant Gayle Johnson (“Johnson”) and Defendant Akil Sharif (“Sharif”) alleging, among other things, that Johnson and Sharif violated Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as amended (“ERISA”), as fiduciaries of the Day-Mont West Tax-Deferred Annuity Plan (“Annuity Plan”).

Whereas, both Johnson and Sharif have timely answered and denied liability.

Whereas the Secretary’s Complaint alleges that Johnson and Sharif are liable to restore losses to the Annuity Plan, including through the set-off of their individual account balances in the Annuity Plan, pursuant to Section 1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, Section 1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. § 1056(d)(4)), and Section 206(a)(4)(D)(iii) of ERISA, 29 U.S.C. § 1056(a)(4)(D)(iii).

Whereas, Johnson and Sharif each has a current account balance in the Annuity Plan in excess of \$60,000, currently held by the Annuity Plan’s asset custodian, Voya Retirement Insurance and Annuity Co. (“Voya”).

Whereas, the Annuity Plan is being terminated and distributions being issued to all participants including Johnson and Sharif.

Whereas, Johnson and Sharif each deny the allegations in the Secretary's Complaint, but intend that the funds currently held in their respective Annuity Plan accounts remain available to satisfy a judgment (if any) in this matter, ordering them to restore losses to the Annuity Plan.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

1. Johnson shall cause her account balance within the Annuity Plan to be rolled over into an annuity account held in her name by Voya ("new Johnson IRA").
2. Pending subsequent orders by this Court or a final disposition of this matter, Johnson is enjoined from making any withdrawals or taking any distributions that would cause the balance of the new Johnson IRA to fall or remain below \$60,000.
3. Pending subsequent orders by this Court or a final disposition of this matter, within 30 days of the end of each financial quarter, Johnson shall submit quarterly statements of the balance of the new Johnson IRA to the Employee Benefits Security Administration ("EBSA") Cincinnati Regional Office, 1885 Dixie Hwy, Ste. 210, Ft. Wright, KY 41011-2664.
4. The Secretary may provide a copy of this order to Voya to prohibit Johnson from making any withdrawals or taking any distributions that would cause the balance of the new Johnson IRA to fall or remain below \$60,000.
5. Sharif shall cause his account balance within the Annuity Plan to be rolled over into a new individual retirement account to be established in his name by Voya. ("new Sharif IRA").
6. Pending subsequent orders by this Court or a final disposition of this matter, Sharif is enjoined from making any withdrawals or taking any distributions that would cause the balance of the new Sharif IRA to fall or remain below \$60,000.

7. Pending subsequent orders by this Court or a final disposition of this matter, within 30 days of the end of each financial quarter, Sharif shall submit quarterly statements of the balance of the new Sharif IRA to the EBSA Cincinnati Regional Office, 1885 Dixie Hwy, Ste. 210, Ft. Wright, KY 41011-2664.
8. The Secretary may provide a copy of this order to Voya to prohibit Sharif from making any withdrawals or taking any distributions that would cause the balance of the new Sharif IRA to fall or remain below \$60,000.

IT IS SO ORDERED.

DATE: November 13, 2018

**\*s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Agreed to by:

/s/ Adam Lubow

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**ADAM LUBOW**

(0097517)

Trial Attorney for Plaintiff  
Secretary of Labor

U.S. Department of Labor  
1240 E. 9<sup>th</sup> St. Rm. 881  
Cleveland, Ohio 44199  
(216)522-3876

KATE S. O'SCANNLAIN

Solicitor of Labor

CHRISTINE Z. HERI

Regional Solicitor

BENJAMIN T. CHINNI

Associate Regional Solicitor

/s/ Lynnette Dinkler

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**LYNETTE DINKLER**

(0065455)

Attorney for Defendant

Gayle Johnson

Dinkler Law Office, LLC  
5335 Far Hills Ave. Ste. 123  
Dayton, OH 45429  
(937)426-4200

/s/ Kevin Bowman

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**KEVIN BOWMAN**

(0068223)

Attorney for Defendant

Akil Sharif

Brannon & Associates  
130 West Second St.  
Dayton, Ohio 45402-1590  
(937)228-2306